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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

Maria Vitulli;

Plaintiff,

v.

Dynamic Recovery Services, Inc.;  
and Equable Ascent Financial, LLC;

Defendants.

No.

**COMPLAINT**

(Jury Trial Demanded)

**I. Preliminary Statement**

1. Plaintiff brings this action for damages based upon Defendants' violations of the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692 *et seq.* Plaintiff seeks to recover statutory damages, actual damages, costs and attorney's fees.

**II. JURISDICTION**

2. Jurisdiction of this Court, over this action and the parties herein, arises under 15 U.S.C. § 1692k(d) (FDCPA), and 28 U.S.C. § 1331. Venue lies

1 in the Phoenix Division of the District of Arizona as Plaintiff's claims  
2 arose from acts of the Defendants perpetrated therein.

### 3 **III. PARTIES**

4 3. Plaintiff Maria Vitulli is a resident of Maricopa County, Arizona.

5 4. Vitulli is a natural person who is allegedly obligated to pay a debt which  
6 was incurred for personal, family, or household purposes.

7 5. Vitulli is a "consumer" as that term is defined by FDCPA § 1692a(3).

8 6. Defendant Dynamic Recovery Services, Inc. is a Texas corporation  
9 registered to do business within the State of Arizona.

10 7. Dynamic is licensed and bonded as a collection agency by the Arizona  
11 Department of Financial Affairs, license number 0910903.

12 8. Dynamic collects or attempts to collect debts owed or asserted to be owed  
13 or due another.

14 9. Dynamic is a "debt collector" as that term is defined by FDCPA §  
15 1692a(6).

16 10. Defendant Equable Ascent Financial, LLC is a Delaware limited liability  
17 company registered to do business within the State of Arizona.

18 11. Equable is licensed and bonded as a collection agency by the Arizona  
19 Department of Financial Affairs, license number 0918638.

20 12. Equable collects or attempts to collect debts owed or asserted to be owed  
21 or due another.

22 13. In the alternative, Equable collects or attempts to collect debts purchased  
23 after default.

24 14. Equable is a "debt collector" as that term is defined by FDCPA §  
25 1692a(6).

1 15. At all times relevant herein, Dynamic acted as an agent of Equable in the  
2 collection or attempted collection of a debt from Plaintiff.

3 16. Dynamic is liable for the actions of its employees and agents acting within  
4 the scope of their employment of collecting or attempting to collect debts  
5 owed or asserted to be owed or due another.

6 17. Equable is liable for the actions of its agents, including Dynamic, acting  
7 within the scope of their employment of collecting or attempting to collect  
8 debts owed or asserted to be owed or due another.

9 **IV. Factual Allegations**

10 18. Sometime prior to 2006, Vitulli leased a vehicle through Toyota Finance,  
11 which was used for personal, family or household purposes.

12 19. Vitulli fell behind on her payments to Toyota, who then repossessed the  
13 vehicle.

14 20. After the repossession, Vitulli offered to make payments to Toyota to pay  
15 off the balance on the debt, but was told by Toyota that it would not  
16 accept payments, and that it needed payment in full.

17 21. In March 2007, Hilco Receivables LLC filed suit in the San Tan Justice  
18 Court against Vitulli claiming that it had purchased and was now the  
19 owner of Vitulli's Toyota Financial account.

20 22. Hilco obtained a default judgment against Vitulli on July 9, 2007.

21 23. Vitulli was never served with the Hilco suit, and did not become aware of  
22 it until she was contacted in June 2013 by Defendant Dynamic.

23 24. At about this same time, upon information and belief, Hilco sold or  
24 transferred the judgment to Equable for collection purposes.

25 25. Upon information and belief, Equable transcribed the justice court

1 judgment to the Maricopa County Superior Court on October 29, 2007,  
2 making it a judgment of the Superior Court.

3 26. Prior to the five year anniversary of the entry of judgment, Equable failed  
4 to renew the judgment as required by Arizona law.

5 27. Thus, the Superior Court judgment expired and became unenforceable at  
6 the very latest on October 29, 2012.

7 28. In or about 2013, Equable assigned the debt or judgment to Dynamic for  
8 collection purposes.

9 29. At the time it assigned the account to Dynamic, upon information and  
10 belief, Equable failed to notify Dynamic that the judgment was over five  
11 years old, had not been renewed and that it had expired and was  
12 unenforceable.

13 30. In the alternative, at the time it assigned the account to Dynamic, Equable  
14 told Dynamic that the judgment was over five years old, had not been  
15 renewed, and that it had expired and was unenforceable.

16 31. On or about June 11, 2013, Miss Karn, a collector working for Dynamic,  
17 telephoned Vitulli's place of employment and left a message for Vitulli  
18 with her supervisor.

19 32. Shortly thereafter, Vitulli was summoned into her supervisor's office and  
20 told that she had just gotten a call from a woman who wanted to speak  
21 with her.

22 33. Vitulli's supervisor told her that the woman had stated that she was from  
23 DRS and that it was important for Vitulli to return her call.

24 34. Vitulli's supervisor then gave her a Post-It-Note with Karn's phone  
25 number, company name and "case number" that she was to reference

1 when she returned the call. A copy of the Post-It-Note is attached hereto  
2 as Exhibit A.

3 35. Vitulli was very shaken by the incident and started researching the phone  
4 number left by Karn.

5 36. She learned that the phone number belonged to a collection agency,  
6 Dynamic.

7 37. Because she was at work, and was not able to take or make personal calls,  
8 Vitulli decided to call Karn the next day to find out what this “case” was  
9 about.

10 38. Vitulli was so stressed and embarrassed upon learning that a collection  
11 agency had called and left a message for her with her supervisor, that she  
12 was unable to concentrate the rest of the day at work.

13 39. Vitulli returned Karn’s call the next day.

14 40. When she answered, Karn advised Vitulli that the call was being recorded  
15 and that it was in reference to the collection of a debt.

16 41. Specifically, Karn said that the call concerned a the debt owed to Toyota  
17 Financial.

18 42. Karn also told Vitulli that she had been sued and lost the case, and that  
19 she now owed over \$13,000.

20 43. During the call, Karn emphasized to Vitulli that she needed to be aware  
21 that Arizona was a “garnishment” state, and that her wages would be  
22 garnished if she did not pay the amount due.

23 44. When Vitulli asked Karn to send her some information concerning the  
24 debt, Karn told her that she did not have any information and that she  
25 needed to contact the Maricopa County Superior Court to get that

1 information.

2 45. After speaking with Karn, Vitulli became very emotionally upset, and  
3 started to break out.

4 46. At the time Dynamic threatened Vitulli with wage garnishment, Vitulli  
5 was the sole provider for her and her seventy-five (75) year old disabled  
6 mother. She knew that if her wages were garnished, both she and her  
7 mother would be unable to pay their bills and might lose their home.

8 47. Over the next few days, Vitulli continued to worry about the wage  
9 garnishment and what she could do to avoid it.

10 48. This worrying caused Vitulli to become physically ill.

11 49. When she went to work on Monday, June 17, 2013, Vitulli opened her  
12 email and saw that her supervisor had sent her an email concerning  
13 another call she had received from Karn.

14 50. Vitulli learned that Karn had called her at work, and had left a voice  
15 message on her supervisor's voice mailbox requesting the Vitulli return  
16 her call as soon as possible.

17 51. Vitulli was extremely embarrassed, and apologized to her supervisor for  
18 the calls, promising that she would take care of this matter on her own  
19 time.

20 52. Vitulli did not know how she was going to take care the "case" with  
21 Dynamic, but worried that if she did not Karn would continue to call her  
22 supervisor and leave messages.

23 53. At the time Dynamic threatened to garnish Vitulli's wages, the judgment  
24 Dynamic was attempting to collect on behalf of Equable had expired, and  
25 was unenforceable.

1 54. At the time Dynamic threatened Vitulli with wage garnishment, it knew  
2 or should have known that it could not garnish Vitulli's wages.

3 55. At the time Dynamic's collector called Vitulli's work number, it knew that  
4 leaving a message with Vitulli's supervisor concerning a "case number"  
5 would likely imply to the supervisor that the call concerned the collection  
6 of a debt.

7 56. At no time has Dynamic or Equable sent Vitulli any written  
8 communication concerning this allege debt.

9 57. In the messages left with Vitulli's supervisor, Dynamic failed to notify  
10 Vitulli that the message was from a debt collector and that it concerned  
11 the collection of a debt.

12 58. As a result of Defendants' actions as outlined above, Plaintiff has suffered  
13 damages including, but not limited to, embarrassment, humiliation, fear,  
14 anxiety, invasion of privacy, and other extreme emotional distress.

15 59. Defendants' actions as outlined above were intentional, willful, and in  
16 gross or reckless disregard of Plaintiff's rights and part of Defendants'  
17 persistent and routine practice of debt collection.

18 60. In the alternative, Defendants' actions were negligent.

## 19 **V. Causes of Action**

### 20 **a. Fair Debt Collection Practices Act**

21 61. Plaintiff repeats, realleges, and incorporates by reference the foregoing  
22 paragraphs.

23 62. Defendants' violations of the FDCPA include, but are not necessarily  
24 limited to, 15 U.S.C. §§ 1692c(b), 1692e, 1692e(2)(A), 1692e(4),  
25 1692e(5), 1692e(8), 1692e(10), 1692e(11), 1692f, 1692f(1), and 1692g.

63. As a direct result and proximate cause of Defendants' actions in violation of the FDCPA, Plaintiff has suffered actual damages.

**VI. DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial on all issues so triable.

**VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that judgment be entered against Defendants for:

- a) Actual damages under the FDCPA;
- b) Statutory damages under the FDCPA;
- c) Costs and reasonable attorney's fees pursuant to the FDCPA; and
- d) Such other relief as may be just and proper.

DATED July 31, 2013 .

s/ Floyd W. Bybee  
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